IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 5.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

C.R.P.PD.Nos.235 & 236 of 2006
and C.M.P.No.2190 of 2006

1. Kaliyaperumal
2. Kuthan
3. Durai

...Petitioners in both C.R.Ps/Respondents/Defendants

Vs.

1. Pudupettai Chokkanathaswamy
Annathana sathiram rep by its Trustee

2. S.Arunachalam ... Respondents/Petitioner Plaintiffs

PRAYER IN BOTH THE C.R.Ps. : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 21.09.2005 passed in I.A.No.1233 of 2005 in I.A.No.710 of 2003 in O.S.No.471 of 1992 and I.A.No.621 of 2005 in O.S.No.471 of 1992 on the file of the District Munsiff, Panruti.

For Petitioners : Mr.S.K.Raghunathan
For Respondents : Mr.Sunilkumar for R2

O R D E R

The defendants are the petitioners in both the revisions, which are filed under Article 227 of the Constitution of India. The plaintiffs filed the suit in O.S.No.471 of 1992 on the file of the District Munsif, Panrutti for possession of the suit property and also for recovery of damages.

2. It is the case of the plaintiffs that the first plaintiff Pudupettai Chokanatha Swami Annathana Sathiram by its power agent N.Subramania Chettiar who subsequently died, is the owner and the defendant's father was the tenant and after his death, defendants 1 and 2 have continued under a oral lease. Since then there was arrears of rent, notice was issued for the purpose of recovery of possession and the suit for possession was filed.

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3. The defendants have also filed the written statement, of course questioning the validity of the notice given under Section 106 of the Transfer Property Act apart from many other defences. After the death of the said Subramania Chettiar, the second plaintiff, who is the second respondent in the revision S.Arunachalam has filed I.A.No.388 of 2003 to implead him to represent the plaintiff Chatram as one of the trustees stating that pending trial Subramania Chettiar, who is the father of the party sought to implead died on 27.02.2003 and on 16.03.2003 the plaintiff Annathana Sathiram has convened a meeting of Pudupettai Kovil Palayam Street residence and unanimously selected him as the trustee of Annathana Sathiram in the place of his deceased father Subramaniya Chettiar. The said application for impleading was allowed by the Trial Court on 23.06.2003.

4. Thereafter, the second respondent filed I.A.No.710 of 2003 in the suit for a permission to amend the plaint. Originally when the suit was filed N.Subramaniya Chettiar was stated to be a power agent of the trust. By the amendment sought for, the second respondent wanted to strike off the term "Power Agent" under the name of Subramaniya Chettiar and add the word "Trustee". He also sought to include paragraph No.3 in the plaint as follows:

> "3) While the suit is pending trial trustee Subramania Chettiar died. Hence in the metting of Koilpalayam inhabitant of Annathanasathiram held on 16.03.2003, the 2nd plaintiff has been unanimously selected as one of the trustee of Annathanasathiram in the place of Subramania Chettiar. Hence 2nd plaintiff has been impleaded as proper and necessary party in the suit to proceed upon the trial of the suit."

5. The said amendment petition was allowed by the Trial Court without giving notice to the defendants who are the petitioner herein on 23.06.2003. It was in those circumstances, the defendants/revision petitioners have filed I.A.No.1233 of 2005 praying for cancellation of the order passed in I.A.No.710 of 2003 dated 23.06.2003. It was the said application in I.A.No.1233 of 2005 filed by the defendants/revision petitioner, dismissed by the Trial Court against which the C.R.P.No.235 of 2006 is preferred. The defendants/revision petitioners have also filed I.A.No.621 of 2005 praying for reopening the case, posted for judgement on 29.03.2005, in which the Trial Court has suomoto reopened the case for the purpose of argument. It was against the said order C.R.P.No.236 of 2006 has been filed by the defendants/revision petitioners.

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6. Mr.S.K.Ragunathan learned counsel appearing for the petitioners in both these cases would submit that I.A.No.710 of 2003 dated 23.06.2003 filed by the plaintiffs for amendment can only be consequential to the allowing of I.A.No.388 of 2003 filed by the plaintiff to implead him as a party and which was allowed on 23.06.2003 and if such amendment application is filed, it is necessary that notice should have been given to the defendants. When such notice was not given and the amendment has been ordered without notice in I.A.No.710 of 2003, the application filed by the defendants in I.A.No.1233 of 2005 to cancel the said order is maintainable especially in the circumstance that the fact of amendment filed and ordered was not even known to the defendants and it was only when the matter was posted for argument on 23.03.2005 for the first time the defendants counsel came to know about the amendment petition filed by the second plaintiff and it was immediately thereafter the petition was filed for the purpose of canceling the order passed in I.A.No.710 of 2003.

7. According to the learned counsel, even if it is for the purpose of carrying out the amendment consequent to the impleading order, notice to the other side is a minimum requirement of concept of natural justice, which cannot be dispensed with by the learned judge. Therefore, on the face of it, the order passed by the learned Judge in allowing the amendment on 23.06.2003 is illegal. He would also submit that while the application was only for the purpose of impleading the second plaintiff as a party and that was the only prayer in the impleading petition in I.A.No.388 of 2003, in the amendment, the second plaintiff has included a paragraph in the plaint stating as if, he was duly selected as a trustee of Annathana Chatiram, about which certainly the petitioners / defendants are entitled for notice, since they have got a right to file their counter affidavit and even if such paragraph has been included, which was not the purpose of the original impleading petition, the defendants are entitled to file additional written statement and additional issue has to be framed and therefore, according to the learned counsel, the entire process has been done in a hasty manner, which is opposed to the basic principles of law.

8. On the other hand, the learned counsel appearing for the respondents/ plaintiffs would submit that amendment sought for is only consequential to the impleading petition. According to him, in the affidavit filed in support of the impleading petition itself, the plaintiff has categorically stated that after the death of Subramaniya Chettiar on 27.02.2003 the Annathana Chatiram has convened a meeting on 16.03.2003 at Pudupettai Kovil Palayam Street, in which he was elected as a trustee in the place of his father. That was allowed only after giving notice to the defendants. In fact the defendants have also filed a counter affidavit in that application. Therefore, by including the said paragraph, no

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prejudice is going to be caused to the defendants.

9. I have heard learned counsel for the petitioners as well as the respondents and perused the entire records.

10. The facts, which I have stated above are not in dispute. It is also true that in the affidavit filed by the second plaintiff in support of his impleading petition in I.A.No.388 of 2003, he has stated that after the death of his father Subramania Chettiar on 27.02.203, plaintiff Anathana Chatiram has convened a meeting on 16.03.2003 and elected him as a trustee of Anathana Chatiram and the defendants have also filed a counter affidavit and it was only afterwards the said I.A.No.388 of 2003 for impleading the second plaintiff was allowed on 23.06.2003. But the prayer in the said I.A.No.388 of 2003 was only for the purpose of impleading the second plaintiff as a party. The prayer in the said I.A.was as follows:

> "For the reasons stated in the accompanied affidavit of the petitioner, it is prayed that this Hon'ble Court may be pleased to permit the petitioner to implead him as 2nd plaintiff in the suit and proceed upon the suit and justice be rendered."

11. Therefore, if consequent to the order of impleading an amendment is to be effected, it can only be in respect of impleading the second plaintiff as a party, in addition to the first plaintiff, who is dead. Now, a reference to the amendment petition filed by the plaintiffs in I.A.No.710 of 2006 stated to be pursuant to the impleading order shows in detail that the amendment to strike out the Subramaniya Chettiar, first plaintiff represented as power agent but calling him as a trustee. Again by including a paragraph in the plaint stating that the second plaintiff was selected as a trustee in the place of his father. It is also relevant at this stage to extract the actual details of amendment sought to be carried out pursuant to the impleading order

> "For the reasons stated in the accompanied affidavit of the petitioner it is prayed that this court may be pleased to grant leave to amend the plaint as detailed hereunder and justice be rendered.
> Panduti
> 17.03.2003 Advocate for petitioner
> DETAILS OF AMENDMENT
> I. In the short cause title of the plaint add the word (died) after the name of Subramania Chettiar and strike out "Power Agent" and added the word Trustee.
> In the short cause title after the name of Subramania Chettiar, add the name (2) S.Arunachalam.
> II. In the long cause title of the plaint after the name of Subramania Chettiar add the word (died) and strike out the word Power Agent and add the word "Trustee".

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III. At page 2 of the plaint add the following as Para 3. 3) While the suit is pending trial trustee Subramania Chettiar died. Hence in the meeting of Koilpalayam inhabitant of Annathanasathiram held on 16.03.2003, the 2nd plaintiff has been unanimously selected as one of the trustee of Annathanasathiram in the place of Subramania Chettiar. Hence 2nd Plaintiff has been impleaded as per and necessary party in the suit to proceed upon the trial of the suit."

12. It was this application, which was ordered by the Trial Court without notice to the defendants on 23.06.2003. It is not even the case of the plaintiffs or as it is seen in the order of the learned Trial Judge that after such amendment was carried out any further issue has been framed or any opportunity was given to the defendants to file additional written statement. It is the specific case of the defendants in the affidavit filed in support of the petition in I.A.No.1233 of 2005 to cancel the order passed in I.A.No.710 of 2003 dated 23.06.2003 that it was only for the first time when the suit was posted for argument on 23.03.2005, the defendants/ revision petitioners came to know through their counsel that such amendment was already ordered on 23.06.2003 and amendment has been carried out. It was immediately thereafter, the said application was filed apart from I.A.No.621 of 2005 for a permission to reopen the case. This is a clear case of denial of principles of natural justice, which is a basic requirement.

13. The above enumerated facts show categorically that it is not as if the amendment petition was filed only to include the name of the second plaintiff as a party, consequential to the impleading petition but by way of an amendment, substitution is made in mentioning the name of Subramaniya Chettiar as a trustee by deleting the word "power of attorney" or "power agent". That apart, a new clause has been introduced in the plaint mentioning as to how the second plaintiff was selected as a trustee. Therefore, it can never be said to be a natural consequence of the impleading petition. In such circumstances certainly it requires a notice to the defendants, even though it is true that even in cases of such consequential amendment notice is a sine quo non, which is a condition precedent, the Court cannot assume and presume that such notice is not required, since it is the right of the parties to the suit. In fact only if notice is given, an opportunity would de there to the defendants to file additional written statement, even questioning the validity of such selection in which event it requires an additional issue to be framed and witnesses are to be examined and without doing anything the matter is posted for argument, which in my considered view, is not only opposed to all norms and principles

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of natural justice but also to the basic principles of law.

14. In these circumstances, the order of the learned Trial Judge stating as if he has no jurisdiction to set aside his order, is untenable. It cannot be said that Section 151 which gives inherent powers, takes away the powers of the Court in rendering substantial justice. The inherent powers are not given for the technicalities but for the purpose of deciding the issues to put an end to the disputes finally with substantial justice. The reasoning of the learned Judge that the principle of natural justice is not applicable in this case is only a misnomer. It is also relevant to point out that while ordering the amendment it must not affect the right of parties, namely, the defendants/ revision petitioners. In I.A.No.621 of 2005, the learned judge while rejecting all the contentions of the defendants, has suo moto reopened the case for the purpose of arguments of the counsels. As I have stated earlier, it appears to be a hasty decision only to dispose the matter and not to render substantial justice to the parties. On facts, which I have narrated earlier, I have no hesitation to come to the conclusion that the defendants certainly require an opportunity to deny the amendment by which the plaintiff is seeking to make not only a new paragraph of his selection as a trustee but also giving a new title to his father Subramaniya Chettiar, who originally himself filed as a "power agent" of the trust but making him as a "trustee". If this is not adding a new case, I do not understand what is the meaning of such amendment. Therefore, it cannot be said that the learned judge can reopen the case only for the purpose of argument without giving opportunity to the defendants to meet the case of the plaintiff about the manner of his selection, apart from the change of title of his father as a "trustee" instead of "power agent".

15. In view of the above said facts, I am of the considered view that in order to render a substantial justice, the orders of the learned Trial judge in I.A.No.621 of 2005 in O.S.No.471 of 1992 dated 21.09.2005 and I.A.No.1233 of 2005 and I.A.No.710 of 2003 in O.S.No.471 of 1992 dated 21.09.2005 are to be set aside and accordingly the said orders set aside and the revision petitions stand allowed with a direction to the Trial Court to restore I.A.No.710 of 2003 in O.S.No.471 of 1992 by setting aside the order passed in the said I.A. dated 23.06.2003 and give opportunity to the defendants/ revision petitioners to file counter and dispose of the same after hearing the parties and thereafter, decide about giving opportunity to file additional written statement and framing additional issue and complete the

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trial of the suit in accordance with law within a period of 6 months from the date of the receipt of the copy of this order and report the same to this Court. (*****) The C.R.Ps. are stand allowed in the above terms. Consequently, the connected C.M.P.is closed.

Sd/
Asst.Registrar
11.1.2007

Sd/
Asst.Registrar
13.3.2007

(*) Deleted as per order of this
Court Dated 8.1.2007 by PJMJ

/true copy/

Sub Asst.Registrar

To

1. The District Munsif, Panruti. |

2. The Section Officer, |
Judicial Section,
High Court, Madras.104. | Corrected order
to be despatched for
+ 1 cc to Mr. R. Sunilkumar, | the order already
Advocate, SR No.1379 despatched.
|
+ 1 cc to Mr. S.K. Radhunathan,
Advocate, SR No. 1031 |

MJ(CO)
SR/19.1.2007 C.R.P.PD.Nos.235 & 236 of 2006
SR/13.3.2007

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